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August 10, 2021

Via email to regs.comments@federalreserve.gov

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Docket No. R-1748, RIN 7100-AG15 (Regulation II – Debit Card Interchange Fees and Routing)

Dear Ms. Misback:

Golden 1 Credit Union (“Golden 1” or the “Credit Union”) is a not-for-profit financial cooperative that was founded in 1933 to serve hard-working Californians. For nearly 90 years, it has been delivering financial solutions with value, convenience, and exceptional service to its members. Golden 1 offers a wide range of products and services to its over one million members, who reflect the diversity of the Credit Union’s home state of California. Golden 1 has a low-income designation from the National Credit Union Administration, meaning the majority of its membership meets certain low-income thresholds based on data available from the U.S. Census Bureau. As a not-for-profit financial cooperative, the Credit Union returns its earnings to members through lower interest rates on loans, higher returns on savings, and no- and low-cost services.

Golden 1 has over \$17 billion in assets and is one of the largest debit card issuers in the United States. In 2019, the Nilson Report ranked Golden 1 as the second-largest debit card issuer when ranked by purchase volume per card, and the 40th-largest overall. As a large issuer, Golden 1—like many other debit card issuers—has felt the effects of the Durbin Amendment’s interchange fee cap.¹ However, Golden 1 worked hard to continue offering free and low-cost products and services to its members despite the substantial decrease in interchange income. For example, Golden 1 continues to offer Free Checking to its members, and offers other deposit products with low minimum balance requirements and low or no monthly maintenance fees. By contrast, research shows that many financial institutions had to eliminate fee-free accounts to manage the financial implications of the Durbin Amendment, with one study estimating that approximately one million individuals—mostly low-income—lost access to the banking system as a result.²

¹ A Federal Reserve Board study of the effects of Regulation II found that interchange income for covered issuers was approximately 34% lower than it would have been absent the regulation. Benjamin S. Kay et al., “Bank Profitability and Debit Card Interchange Regulation: Bank Responses to the Durbin Amendment” (2014), at 18. Golden 1 experienced a similar reduction in interchange income when it reached an asset size that rendered it subject to the fee cap in 2017.

² Todd J. Zywicki et al., “Price Controls on Payment Card Interchange Fees: The U.S. Experience,” *International Center for Law & Economics* (2014), at 14. See also Kay et al., *supra* n.1, at 20 (finding that covered issuers increased deposit fees three to five percent in response to Regulation II to partially offset lost interchange income).

The proposed changes to Regulation II will jeopardize Golden 1's ability to continue to offer the no- and low-cost products and services on which many of its members, and their diverse communities, depend. Although framed as a "clarification" of existing requirements, the proposed language goes far beyond expanding the current prohibition on network exclusivity to card-not-present transactions. Instead, it effects a burden shift, placing the full compliance obligation on debit card issuers like Golden 1, even though such issuers have no control over the choices made by merchants, acquirers, and other participants in the debit card transactions at issue.

Section 235.7 of Regulation II currently provides that a debit card issuer complies with the prohibition on network exclusivity "only if the issuer allows an electronic debit transaction to be processed on at least two unaffiliated payment card networks, each of which does not, by rule or policy, restrict the operation of the network to a limited geographic area, specific merchant, or particular type of merchant, and each of which has taken steps reasonably designed to enable the network to process the electronic debit transactions that the network would reasonably expected will be routed to it, based on expected transaction volume." 12 CFR § 235.7(a)(2). As written, the issuer must allow its cards to route on at least two broadly-available, unaffiliated networks, but is not responsible for the choices made by the merchant.

The proposed rule change, however, would modify this language to provide that a debit card issuer satisfies the non-exclusivity requirements "only if, for every geographic area, specific merchant, particular type of merchant, and particular type of transaction for which the issuer's debit card can be used to process an electronic debit transaction, such issuer enables at least two unaffiliated payment card networks to process an electronic debit transaction..." This places the obligation on the issuer to ensure that, everywhere its cards are accepted, *every specific merchant* will be able to choose from at least two routing options.

But debit card issuers like Golden 1 cannot and do not control the network choices made by merchants, nor can they anticipate which of the many networks merchants have relationships with for routing. If Golden 1 enabled one signature network and one PIN network, for example, each of which had a nationwide reach and processed both point-of-sale and card-not-present transactions, Golden 1 could nonetheless find itself out of compliance with the regulation if a merchant did not accept Golden 1's PIN network because in that situation, for that specific merchant, Golden 1 would only have enabled a single network. The only way to ensure compliance with the revised regulation would be to enable all the debit card networks, so Golden 1 could guarantee that any debit card transaction made using its cards could be processed on whatever networks the merchant selected. (Even then, if a merchant chose to accept only a single network, Golden 1 could be considered out of compliance with the revised Regulation.)

Such an outcome would be unworkable for Golden 1. There are many network providers. Each additional network adds operational complexity and costs; adding multiple networks all at once would complicate operations exponentially. For example, networks have different portals for submitting and managing disputes, placing new technological and training burdens on the Credit Union and its employees and increasing the risk of non-recovery, not to mention the sudden, drastic impact from a vendor management perspective. In addition, Golden 1 entered into its existing contracts based on the current regulatory landscape. The dramatic shift compelled by the proposed language—requiring Golden 1 to enable every debit card network—would upset existing contractual expectations and Golden 1's bargained-for rights and obligations. Golden 1 should not be forced to have contractual relations with network providers. Moreover, with debit card issuers stripped of any bargaining leverage, coupled with rising operational costs, consumer-friendly checking accounts would be further threatened across the financial sector.

In light of the concerns outlined above, Golden 1 requests that the final regulation retain the current language of section 235.7 or otherwise clarify that a debit card issuer satisfies the prohibition against network exclusivity if it has enabled at least two unaffiliated networks that do not restrict operations to a limited geographic area, specific merchant, or particular type of merchant or transaction. This clarification would ensure that debit card issuers are only held responsible for the aspects of compliance within their control.

This proposed regulation ultimately harms consumers, especially those of modest means.

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We would be happy to follow up with you regarding the concerns raised in this letter. If you have any questions, please contact Richard Musci, Executive Vice President, at (916) 732-2855 or rmusci@golden1.com.

Sincerely,

Golden 1 Credit Union